

INFORMATION FOR AMERICAN CITIZENS REGARDING
ARREST AND IMPRISONMENT IN AUSTRIA

*Prepared by the Consular Section of the
American Embassy, Vienna, Austria*

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1. Purpose

The purpose of this informational material is to furnish a summary of applicable Austrian laws and procedures to Americans arrested by Austrian authorities.

This information package was prepared by the Consular Section of the American Embassy in Vienna, Austria, following consultations with Austrian prison officials and the Austrian Federal Ministry of Justice. Provisions of the Austrian Criminal Code, the Austrian Code on Criminal Procedure and the Law on the Execution of Sentences are summarized. Although the information contained herein was compiled with care and is believed correct, the material is intended as an informal guide to assist American citizens in understanding the laws and procedures governing the legal and penal system in the Republic of Austria and can not be considered definitive or in any way a substitute for legal counsel. The United States Government cannot accept responsibility for the accuracy of the information contained herein or as to how Austrian law will be applied by the authorities in a particular situation.

2. Jurisdiction of Austrian Law

Under Austrian law, any person who commits an offense within Austria or aboard an Austrian ship or airplane is subject to Austrian criminal jurisdiction. Furthermore, Austrian courts may assume jurisdiction over certain crimes wherever committed, such as conspiracy to overthrow the Austrian government, crimes against Austrian government officials abroad, false depositions made abroad for use before an Austrian court, kidnapping, counterfeiting of currency or securities, narcotics trafficking and hijacking of an airplane. In other cases involving a serious offense committed by a non-Austrian citizen outside of Austria, and the alleged perpetrator is subsequently in Austria, the Austrian government must offer the extradition of the offender to the country where the offense was committed. If extradition is not sought by the latter country, the offender may be tried in Austria for the offense committed abroad.

3. The Role of the United States Government

Under the provisions of Article 36 of the Vienna Convention on Consular Relations of 1963, to which both Austria and the United States are signatories, an arrested person may freely communicate with the nearest American Consular Officer. The Consular Section of the American Embassy is located at Parking 12A, A-1010 Vienna, Austria, telephone number (Vienna area code 01) 313 39, Ext. 7535. The Embassy has consular jurisdiction of Austria's nine Provinces. While Austrian authorities will forward letters addressed to the consular office named above, they will not normally permit a telephone call. In spite of anything you may have heard to the contrary, neither the United States Government nor its representative, an American Consular Officer, can get an American out of prison. A U.S. passport does not entitle its bearers to any special privileges. While in Austria, American citizens are subject to the same laws and prison rules as Austrian citizens. An American can not and will not receive preferential treatment because of his nationality. American Consular Officers can and do intercede on behalf of Americans imprisoned in Austria, but there are definite limits as to what they

can do to help in any given situation. Neither arrest nor conviction, however, deprives a United States citizen of the right to the Consular Officer's best efforts in facilitating the welfare and defense of that citizen or in protecting the citizen's legal and human rights.

4. What the Consul Can Do

A Consular Officer can visit you in jail after being notified of your arrest in order to check on the treatment which you are receiving and to monitor the state of your health and well-being. Visits also help the Consul determine whether his/her assistance is needed to help you adjust to the prison routine, such as purchasing soap, postage stamps, etc. The Consular Officer can give you a list of reputable local attorneys. She/he is not permitted, however, to help you choose from the list nor is she/he permitted by consular regulations to give you legal advice.

The Consular Officer can intercede with local authorities to ensure that your rights under local law are fully observed and that you are treated humanely in accordance with internationally accepted standards. To do so, the Consul will follow the progress of your case in the judicial process and, where necessary and requested, act as liaison between you and your lawyer, the court, and the prosecutor.

The Consular Officer can protest mistreatment or abuse to the appropriate Austrian authorities.

The Consular Officer can notify your family and/or friends and relay requests for financial and other aid -- if you authorize her/him in writing to do so.

5. Austrian Criminal Procedures

Under Austrian law, there are three types of criminal procedures, namely, (A) Administrative Criminal Procedure, (B) Criminal Procedure under Revenue Laws, and (C) Regular Criminal Procedure.

A. Administrative Criminal Procedure.

This procedure deals with minor infractions of the law such as traffic violations (including driving under the influence of alcohol or drugs), disturbance of the peace, and illegal border crossing. A person may be arrested for such offenses without a warrant if (a) his identity can not be established, (b) there is reason to believe that he might become a fugitive or (c) he has repeatedly committed or attempted to commit the same offense. A person so arrested must be brought before a police magistrate within 24 hours of his arrest. (Saturdays, Sundays and Austrian legal holidays are not counted in the 24-hour period). The magistrate will read the charges to the accused from the police report and ask for his comments. If the accused does not understand German and the magistrate does not speak English, the accused may insist on an interpreter. The accused has the right to ask for postponement of the trial in order to retain an attorney at his own expense. The magistrate will normally grant bail in an amount equal to the fine established for that offense. The minimum fine for driving under the influence of alcohol, for example, is EUR 300 (approximately \$400) and the

maximum fine is EUR 5,900 (approximately \$ 8,000). The maximum fine for disturbance of the peace is EUR 218 (approximately \$ 300). If the accused does not request postponement, the magistrate will normally state his findings and pronounce the sentence after having heard anything the accused may wish to say in his defense. In most cases, the sentence consists of a fine plus 10% of the fine for cost of the proceedings. If the fine cannot be paid, a prison term will be imposed, for example, up to six weeks for driving in an intoxicated condition and up to two weeks for disturbance of the peace.

Undesirable Aliens

In addition to the administrative proceedings described above, a non-Austrian citizen who is considered by police authorities to be an undesirable alien, for example, destitute and without an established place of residence in Austria, may be arrested and held without a judicial hearing in police custody up to four months pending deportation. Alternatively, an American arrested for vagrancy may be released if he is able to raise funds for immediate and direct return to the United States or, if such is the case, to his place of permanent residence abroad.

Appeals against decisions of police magistrates and revenue magistrates (see following paragraph) may be taken to higher Austrian administrative authority and ultimately to the Austrian Administrative Court or the Austrian Constitutional Court.

(B) Criminal Procedure in Connection with Revenue Laws

This procedure is invoked in cases of minor tax evasion and smuggling. The procedure is similar to that under paragraph (A) above. Sentences of up to three months may be imposed by a magistrate of the Austrian revenue service in addition to fines of up to twice the amount of the evaded taxes or customs duties plus the value of any smuggled goods which could not be confiscated.

(C) Regular Criminal Procedure

This is the most prevalent procedure used in the Austrian criminal court system.

Arrest

The investigating judge must issue an arrest warrant, if a suspect is to be taken into provisional custody. The arrest warrant must be handed to the suspect within 24 hours of his arrest by the police.

A person may be arrested under Austrian law even without an arrest warrant, provided that (a) he was caught in the act or immediately after the act of committing a criminal offense, or (b) he is or is likely to become a fugitive from justice, that is, depart Austria without official authorization, or (c) he has attempted, or is likely to attempt, to tamper with evidence or influence witnesses or persons accused in the same crime regarding their testimony or (d) he is likely to repeat or continue the crime charged. A person suspected of having committed a criminal offense calling for a minimum sentence of ten years under the Austrian Criminal Code, such as murder, robbery, rape, kidnapping and arson, including an attempt at these crimes, must be arrested.

Initial Hearing

After having been arrested, the arrestee must be questioned by police officers without delay and either released unconditionally or pending further court action or transferred to the custody of the competent court within 48 hours. After having been transferred to the court prison, the arrestee must be questioned by an investigative judge within 24 hours. At this initial hearing, which is not a trial and which normally takes place within the court prison, the investigative judge informs the arrestee of the offense he is suspected of having committed and asks the suspect whether he pleads guilty or not guilty. While being questioned by the police or by the investigative judge at the initial hearing, the arrestee is not entitled to the presence of an attorney. He may, however, decline to answer any questions. Anything the arrestee says may be used in further proceedings against him. If the arrestee does not understand German and the judge does not speak the arrestee's language, an interpreter must be summoned.

After the initial hearing, the investigative judge decides whether the arrestee should be remanded to custody pending investigation and trial, or be released with or without bail or other security such as, for example, the passport of the arrestee. The surrender of one's passport is strictly a voluntary act on the part of the arrestee. Surrendering one's passport can serve, however, to keep the arrestee out of jail, as the Austrian authorities presume the arrestee can not then leave the country. It should be noted, however, that although American citizens are entitled to be issued passports, if the court advises the Consular Officer in writing that the passport is being held in lieu of incarcerating the American citizen and asks for notification of any replacement attempts, the Consular Officer is required (by Department of State instructions) to so notify the Court prior to issuance of the replacement passport. Such notification will result, normally, in the immediate physical detention, that is, jailing of the accused.

If the judge remands the arrestee to continued custody, he must state the reason. Valid reasons are that the arrestee might become a fugitive from justice, might influence witnesses or tamper with evidence if released, might repeat the offense, or that the offense involved calls for a minimum sentence of ten years.

Preliminary Appeals - Bail - Defense Attorney

The arrestee is entitled to file an appeal in writing (Haftbeschwerde) against his being remanded to custody. The decision on such an appeal is made by a board of three judges. In his appeal, the arrestee may offer bail if he has sufficient funds at his disposal. Bonding corporations or bondsmen are not available in Austria. It is recommended, however, that the arrestee retain an attorney to file and process the appeal (Haftbeschwerde) on his behalf. If the accused has already selected at his own expense an attorney to represent him, he should request the investigative judge to notify his attorney. (Ordinarily, at this stage of the proceedings, an arrested American has already been or will be visited shortly by an American Consular Officer who will assist in notifying the attorney the arrestee has chosen.) If the arrestee has no funds to pay an attorney, he should apply to the investigative judge for the appointment of a defense attorney without fee. If the judge is satisfied that the arrestee has insufficient funds, he will instruct the local bar association to appoint an attorney. This procedure takes some time, however, and it might be one or more weeks until defense counsel visits the arrestee in jail.

One or more days after the initial hearing, the arrestee will ordinarily be questioned in detail by the investigative judge in the presence of an interpreter. The arrestee again has the right to remain silent until he has obtained the advice of an attorney. The investigative judge may or may not permit the presence of an attorney while questioning the arrestee. After conclusion of the pre-trial investigation by the investigative judge, the case is referred to the public prosecutor who will either dismiss the case or prefer formal charges. In the latter case, a copy of the charge sheet (in German) will be served upon the arrestee by the investigative judge. The arrestee may request the judge to have the charge sheet translated to him orally, if this is not done routinely. If the arrestee believes that he is being charged unjustly, he may appeal to the investigative judge and the latter will refer the appeal to the Superior Court for decision. It is recommended, however, that the advice and assistance of defense counsel be obtained before filing such an appeal.

Trial

If no appeal is filed against the charges or the appeal is denied, the case is referred to a trial judge who will schedule the case for trial. There is no legal time limit for the scheduling of the trial. It may be anywhere from one week to two months or even longer before a case comes up for trial, depending on the court calendar and the seriousness of the offense charged.

If the offense charged calls for imprisonment of not more than three years (in case of larceny, not more than five years), the case comes to trial before a one-man court (Einzelrichter). If the offense charged calls for imprisonment of not more than ten years, the case is tried before a court composed of two professional judges (one of whom presides) and two lay judges (Schoeffengericht). All cases calling for a minimum of five years and maximum exceeding ten years imprisonment are tried before a court composed of three professional judges and eight jurors (Geschworenengericht).

In contrast to the laws of the United States, the accused has no right under Austrian law to demand a jury trial, regardless of the offense charged.

At the time scheduled, the accused is taken to the courtroom under guard. He is normally permitted to wear his own clothes for the trial. The trial is open to the public unless the presiding judge decides otherwise for reasons involving public order, public morals or national security.

In the United States, a trial judge will have little or no knowledge of the facts of a case until evidence has been introduced in the courtroom. In Austria, however, the trial judge will have read the file of the case in advance. This file contains copies of the police report and all statements, actions and records taken during pre-trial investigation.

When the members of the court enter the courtroom, everyone rises and is seated again only after the court members have been seated. The prosecutor normally sits to the right of the bench and the defense counsel normally sits to the left behind the accused. An interpreter will be furnished by the court, if needed. Next to the prosecutor may be sitting one or more attorneys representing the victim of the alleged offense. Under Austrian law, a victim or his survivors may join the criminal

proceedings as a private party claiming damages. The criminal court may award damages if the accused is found guilty.

The presiding judge will call the names of the accused and the witnesses to determine whether they are present and then orders the witnesses (Except expert witnesses who sit on the bench with the court) to leave the room and wait outside until called. The accused is then called forward to face the court. The presiding judge will question him concerning his personal background, such as date and place of birth, religion, education, occupation, income and property he might own and the number of dependents. The questions on income, property and dependents are pertinent since, under Austrian law, the amount of any fine imposed by the court when sentencing the accused will be in relation to his financial circumstances. The judge will also ask whether the accused has any previous criminal record.

The presiding judge will then order the charges to be read aloud to the accused. This is normally done by the court stenographer. If the accused is not competent in the German language, the court interpreter will translate the charges. The presiding judge will ask the accused whether he understands the charges and whether he wishes to plead "guilty", "not guilty" or to remain silent. (The accused should have discussed his answer to this question with his attorney prior to the trial.) The judge will then question the accused about the facts of the case. The accused may refuse to make a statement. Under certain circumstances, this may, however, be considered by the court to be an indication of guilt. This point should likewise be carefully discussed with the defense counsel before the trial. Under Austrian law, an accused may not be sworn, nor may he be prosecuted for making false statements at his own trial. The judge will advise the accused, however, that telling the truth will be considered a mitigating factor if he is convicted.

After the court has completed the questioning of the accused, the prosecutor, the attorneys for the victim, if any, and the defense counsel may question the accused. Any expert witnesses present, such as doctors, psychiatrists or automotive engineers may also ask questions. The court then calls the witnesses and obtains their testimony. The judge, prosecutor, attorneys for the victim, expert witnesses, the defense counsel and the accused may also question witnesses. After each witness has testified, the judge may ask the accused whether he has any comments regarding the statements of the witness. After all the evidence is presented, any expert witnesses present give their opinions. Then the prosecutor, attorneys for the victims, if any, and the defense counsel sum up the case in their closing statements. Under Austrian law, the court interpreter does not translate the entire testimony of the witnesses or the closing arguments in their entirety, but merely summarizes them for the accused at the direction of the presiding judge. Subsequently, the accused is asked by the judge whether he wishes to make a final statement. In answering the accused is not supposed to go into the merits of the case as this has been already covered in the closing arguments of his defense counsel, but rather his response should request an acquittal or a lenient sentence. The trial proceedings are also not recorded verbatim by the court stenographer, being chiefly summarized. Only significant testimony is taken down verbatim at the direction of the presiding judge.

After the final statement of the accused, a one-man court (Einzelrichter) will normally pronounce his verdict and the sentence immediately, while the other courts (Schoeffengericht or

Geschworenengericht) will withdraw to another room to determine the verdict and the sentence. After reaching a decision, the court members will return to the courtroom and everyone rises. In the case of a Schoeffengericht the presiding judge will pronounce the verdict and the sentence. At the jury trial (Geschworenengericht), the spokesman for the jurors will first state the verdict of the jury which has been reached by majority vote. A unanimous verdict is not required. A tie vote results in acquittal. In case of a verdict of "guilty", the court members will withdraw to determine the sentence which may be pronounced the same day or at a subsequent time.

If the verdict of the jury is "not guilty", the court will normally acquit the accused and order his release. If, however, the three judges sitting on the bench are of the unanimous opinion that the jury's verdict was in error, the court will suspend the jury's verdict and refer the case to the Austrian Supreme Court for a decision as to whether the jury's findings should be upheld or whether a new trial before another court and another jury should be ordered. In the latter case, the original trial court decides whether the accused should remain in custody or be released pending the decision of the Supreme Court. If the Supreme Court orders a new trial and the new jury reaches the same verdict as the jury in the first trial, such verdict may not be suspended again by the court.

After an accused is found guilty and the sentence is pronounced, the presiding judge will advise the convicted individual that he has one of four choices: (a) accept the verdict and sentence, (b) appeal the verdict and sentence, (c) appeal the extent of the sentence only, or (d) request three days to think over his choice. The convicted should request to be permitted to discuss his response with his attorney unless he is convinced that the sentence is a very lenient one which he desires to accept. It is particularly important to discuss the various possibilities with defense counsel before making a choice as the prosecutor or any attorneys for victims are likewise authorized to file an appeal against the lenience of the sentence or even an acquittal.

Appeal

The prosecutor will normally file an appeal in any case of appeal by the convicted. Thus, an appeal by the convicted might ultimately result in an increase of the sentence should his appeal be denied by a higher court while the prosecutor's appeal is granted. Only one appeal is available and it is heard either by the Provincial Court (Landes- or Kreisgericht), Superior Provincial Court (Oberlandesgericht) or the Supreme Court (Oberster Gerichtshof), depending on the seriousness of the offense involved and the nature of the appeal. In the event of an appeal, the court of first instance decides whether the convicted is remanded to custody pending a decision on the appeal or whether he should be released with or without bail or other security, as for example, surrendering his passport. Within two weeks from the announcement of an appeal, the accused or his defense counsel must submit a brief supporting the appeal.

The appellate court may either decide the appeal on the basis of the trial record from the court of first instance or it may order a public hearing with prosecutor and defense counsel present to argue their cases. Only in rare instances is the presence of the accused at an appeal hearing required by the appellate court.

6. Incarceration

After his arrest, an accused may be detained in a police jail up to 48 hours and if not released, then transferred to the prison of the court having jurisdiction over his case. He will normally be examined by a police or court physician upon admission to the prison or shortly thereafter. If he needs medical attention, he should inform the examining physician immediately. While serving his sentence, a prisoner may request at any time to be examined by the prison physician if he believes that he needs medical attention. If need be, he may be taken to a specialist or admitted to the prison hospital, general hospital or clinic. Charges for medical treatment or hospitalization while imprisoned are borne by the Austrian government. A prisoner does not have the right to be examined or treated by a doctor of his own choice.

While in custody pending investigation and/or trial, an arrestee may write and receive letters which are, however, censored. He may receive visitors with the permission of the judge. He may also receive packages containing clean underwear, newspapers and other reading material, unless prohibited by the investigative or trial judge. Furthermore, the arrestee may buy extra food, cigarettes, toilet articles and postage stamps in the prison canteen. Normally, however, he must announce in advance, on a certain weekday specified in the prison regulations, what items he desires to purchase. If he has no funds of his own on deposit with the prison administration, funds may be deposited on his behalf by friends or relatives.

In the event the arrestee is convicted and sentenced to a prison term, he then acquires the status of a "prisoner serving his sentence" (Strafhaeftling). If the sentence is less than one year, he normally remains in the court prison, otherwise he is transferred to a penal institution. At present, 13 penal institutions are in use in Austria. Type of inmates and locations are as follows:

For male prisoners:

Garsten near Steyr, Upper Austria
Graz-Karlau, Styria, Austria
Hirtenberg near Vienna
Stein near Krems, Lower Austria
Suben near Schaerding, Upper Austria
Vienna Simmering, Vienna
Sonnberg near Hollabrunn, Lower Austria

For female prisoners:

Schwarzau near Vienna

Special Institutions:

Gerasdorf near Vienna (for juvenile offenders)
Mittersteig, Vienna and

Göllersdorf near Vienna(for mentally retarded, but still criminally responsible offenders)
Vienna Favoriten, Vienna (for alcoholics and drug addicts)

In imposing a prison sentence, the court will usually credit the entire period of pre-trial confinement toward fulfillment of the sentence. Furthermore, a prisoner may be released on probation after having served two-thirds of his sentence, provided he has already served a minimum of six months, including periods before and after conviction. In rare instances, prisoners may be released on probation after having served one-half of their sentence, provided one year in jail has already been served. It is not necessarily the trial court which decides on early release for a prisoner. The court in whose venue the prisoner is incarcerated makes such a decision. It has been the policy of the courts, however, not to grant early release to a prisoner who was convicted of large-scale drug trafficking, sex crimes or drunken driving resulting in death of one or more persons.

As in pre-trial confinement, a prisoner is entitled to medical care and necessary treatment. He may write and receive mail which is censored by the prison director or a substitute. Owing to a requirement that letters not written in the German language be translated, a delay may be encountered in the receipt and forwarding of mail. Correspondence between an American prisoner and his attorney or the American consul, however, is normally delivered promptly and without censorship. The prisoner may receive newspapers and reading materials. Local newspapers and books, including some books in English, are furnished by the prison library. Three times a year, at Easter, Christmas and on his birthday, a prisoner may receive one or more packages with food and other articles. The total weight of the packages on each occasion may not exceed three kilograms (approximately 6 1/2 lbs). The packages may not contain canned goods, alcoholic beverages, drugs or food which requires cooking or other preparation before it can be consumed. The weight of tobacco products may not exceed 250 grams (approximately nine ounces).

As in pre-trial confinement, the prisoner may buy extra food, toilet articles, cigarettes and stamps in the prison canteen. If he has no funds on deposit, funds may be deposited for him with the prison administration.

A prisoner serving a sentence is required to work. The work to which he is assigned, however, must not endanger his health. He receives a small monetary compensation for his labor. A prisoner may be visited by someone other than a consular officer or by his attorney not more often than once a week.

Additional visits must be approved by the prison director. Each visit may not last longer than 15 minutes unless the prison director grants an extension. A prison official is normally present during the visit. Visits by a consular officer or the prisoner's attorneys are not subject to any restrictions, but are observed by prison officials.

If a prisoner violates prison regulations, such as failing to follow orders from prison officials, attempting to escape, smuggling or attempting to smuggle messages out of the prison, he is subject to disciplinary measures. These may include a reprimand, withdrawal of privileges and/or solitary confinement.

7. Deportation

After serving his sentence or release on probation, a non-Austrian citizen is normally transferred to the custody of the administrative authorities or the Foreigner's Police for possible deportation. The Aliens Police will issue an expulsion order, including a ban on re-entry for the European Economic Area. The authorities will either escort the person concerned to the border or to the nearest airport, provided he has a ticket or the means to buy one,.

8. Privacy Act

The Privacy Act of 1974 was enacted to protect American citizens against unauthorized disclosure of information about themselves to other persons without their knowledge and consent. Therefore, if an arrestee wishes the Consular Officer to notify his family or friends of his arrest or any other pertinent facts regarding his imprisonment, health, etc., he must authorize the Consular Officer to do so by signing a Privacy Act release form. The Consular Officer will not inform any individual of an arrest unless the arrestee so requests in writing. As stated earlier in this material, the Department of State is most interested in facilitating the arrestee's welfare and defense and in protecting his rights. Therefore, in order to keep the Department of State well-informed, the Consular Officer sends details of the arrest, the status of the trial or appeal and other pertinent aspects of the case. In narcotics cases, this information may also be provided legally to the Drug Enforcement Administration. Nevertheless, the arrestee may be assured that no information regarding his arrest will be released to his family or any other unauthorized individuals without his written permission.

Prisoner Transfer Information

Below please find general information for United States citizens convicted of a crime in Austria who are considering a prison transfer to the United States under the terms of the Council of Europe Convention on the Transfer of Sentenced Persons (or *COE Convention*, aka the *Strasbourg Convention*.). For each transfer the consent of (1) the U.S. Government, (2) the foreign government and (3) the prisoner is required.

For more information please see:

The Prisoner Transfer Treaties feature on the U.S. Department of State, Bureau of Consular Affairs Internet home page http://travel.state.gov/law/legal/treaty/treaty_1989.html

DOJ International Prisoner Transfer Unit Internet page <http://www.justice.gov/criminal/oeo/iptu/>

In order to make an informed decision as to whether or not to apply for transfer, the prisoner should write directly to:

Chief, Defender Services Division
Administrative Offices of the United States Courts
Washington DC 20544
ATTN: Prisoner Transfer Treaty Matters

A prisoner is free to write to the Defender Services Division at any time and such inquiries will generally be forwarded to the Federal Public Defender (FDP) for review and response. As a practical matter FDP's cannot provide specific information or opinions unless the prisoner has a final sentence that is, convicted, sentenced and all appeals completed.

It is suggested that the prisoner's initial letter should contain as much of the following information as possible:

- (1) Full name, including maiden name and any aliases;
- (2) Date and place of birth;
- (3) Date of offense;
- (4) Date of arrest;
- (5) Precise offense for which convicted;
- (6) A detailed description of the offense, including:
 - (a) The foreign government's version, and if possible exact wording;
 - (b) Whether or not a weapon was used or present when the offense was committed;
 - (c) If a drug offense, the type and quantity of drugs involved;
 - (d) A description of the prisoner's role in relation to any others participating in the offense; and
 - (e) Whether the prisoner cooperated, confessed, or took any other action accepting responsibility for unlawful conduct.
- (7) Sentence imposed or expected, including any fines or restitution;
- (8) Any projected release dates after considering parole or other forms of early release¹;
- (9) Any labor credits or prisoner work credits the prisoner earned; and
- (10) An accurate description of prior misdemeanor or felony records in the United States including:
 - (a) Any prior sentences received;

¹ Aliens may be eligible for early release after serving half-time pursuant to § 133a StVG (Penal Law); if granted, the person will generally be banned from re-entering the Schengen Area for ten years or indefinitely.

- (b) Prior time actually served;
 - (c) Whether under probation, parole, or criminal justice supervision at the time of the offense; and
 - (d) Whether there are any outstanding warrants.
- (11) An accurate mailing address.

Once the prisoner has received information from the Federal Public Defender (PFD), and there are no appeals pending, the prisoner may make formal application for transfer.

The prisoner should complete and sign the Prisoner Transfer Application Questionnaire. This document is part of the "Transfer Packet" that the Department of Justice (DOJ) sends once it is aware that a prisoner is eligible for transfer.

Neither an inquiry nor a request for transfer will bind a prisoner to give final consent. However, once final consent is given and verified at the verification proceeding, the consent becomes irrevocable.

IMPORTANT: The U.S. Department of Justice informed us that the process **must** be started in Austria. The American prisoner must request the prison transfer by consulting prison authorities and/or writing directly to Austrian Ministry of Justice, Sektion IV, Museumstrasse 7, A-1080 Vienna, Austria.

PLEASE NOTE: THE PROCEEDINGS FOR TRANSFER TO A PRISON IN THE UNITED STATES MAY TAKE UP TO ONE YEAR

American Embassy Vienna
Consular Section